

1 THE HONORABLE MARSHA J. PECHMAN
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 AMAZON.COM, LLC,
11 Plaintiff,

No. 2:10-cv-00664-MJP

12 v.
13 KENNETH R. LAY, in his official capacity as
14 Secretary of the North Carolina Department of
Revenue,
15 Defendant.

16 JANE DOE 1, JANE DOE 2, JANE DOE 3,
17 JANE DOE 4, JANE DOE 5, JANE DOE 6,
18 AND CECIL BOTHWELL,
19 Plaintiffs-Intervenors,
20 v.
21 KENNETH R. LAY, in his official capacity as
22 Secretary of the North Carolina Department of
Revenue, and AMAZON.COM, LLC,
23 Defendants in Intervention.

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CECIL BOTHWELL DECLARATION -- 1
No. 2:10-cv-00664-MJP

AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON
901 Fifth Ave., Suite 630, Seattle, Washington 98164
(206) 624-2184

1 I, Cecil Bothwell, hereby declare and state as follows:

2 1. I submit this declaration based on my personal knowledge in the above-captioned
3 case.

4 2. I am one of the Intervenors in this action.

5 3. I am an elected member of the Asheville City Council. I am also an author and
6 the proprietor of Brave Ulysses Books, a publishing house. Books published by Brave Ulysses,
7 including those written by me, are available for purchase on Amazon, and I have myself
8 purchased expressive items from Amazon since August 2003.

9 4. I am a former newspaper journalist and editor. I retired and ran for public office
10 in 2009. I was elected to the Asheville City Council in November 2009, and am currently
11 serving a four-year term.

12 5. I am an atheist. My political opponents seized on that fact following my election
13 and undertook high profile, public efforts attempting to prevent me from being sworn in to office
14 pursuant to a provision of the North Carolina Constitution that purports to prohibit anyone who
15 “den[ies] the being of Almighty God” from holding public office.

16 6. I eventually overcame that challenge and was permitted to take office. I was
17 sworn in to office in December 2009. That experience has made me acutely aware of how
18 damaging and potentially life-altering the revelation of personal and intimate details about public
19 officials can be, and how critical it is to make sure that government does not unnecessarily obtain
20 personal and private information about individuals, especially public officials.

21 7. The challenge to my election created a significant amount of public attention,
22 both in North Carolina and elsewhere. Several other non-City Council elected public officials in
23 the State subsequently told me that they shared my personal beliefs, but that they could not risk
24 having their personal beliefs become public knowledge, and that if they did, their careers would
25 be at risk.

1 8. Because of this experience, I do not want to take any chances that my private,
2 personal purchasing records on Amazon will be turned over to the State if they are linked to my
3 name and other identifying information. I have kept my purchasing records confidential and
4 private, and I have not publicly disclosed them to others. As a public official, I am aware that
5 information about anything I purchase – regardless of its content – may appear in the press or
6 become political fodder for use by opponents, especially if it is potentially controversial in any
7 manner. Although I personally do not believe that there is anything wrong with what I have
8 purchased, I know that there are some in the State and in my community who might so believe,
9 so it is critical that what I have chosen to purchase and read remain private and confidential.

10 9. I am also concerned about the Department of Revenue's requests to Amazon
11 because of what it means to me as an author and a publisher. Brave Ulysses publishes books
12 written by me and by other authors. The vast majority of the books published by Brave Ulysses
13 focus on issues or subject matters that could be associated with particular political, social,
14 cultural, or religious beliefs. For example, one of the books, written by me, is "The Prince of
15 War: Billy Graham's Crusade For A Wholly Christian Empire," a highly critical, unauthorized
16 biography of Billy Graham, one of North Carolina's most famous and popular former residents.
17 I faced severe criticism and hostility for writing this book, and I am very concerned that my
18 readers and customers will suffer similar adverse consequences, including retaliation, if it were
19 publicly disclosed that they were reading the book.

20 10. Books published by Brave Ulysses are available for sale through Amazon.
21 Amazon is a critical outlet for a small publisher like Brave Ulysses, as it is simply not possible
22 for many of its works to otherwise get into the hands of individuals across the country and the
23 world who might desire to purchase and read the books.

24 11. I do not want the State to know which individuals have purchased books I have
25 written and/or authored, both because I believe that the State should not be collecting and
26 retaining information about what people are reading, and because I know that my readers and
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1 customers could face retaliation and adverse consequences if their purchases become publicly
2 known. I have taken reasonable steps to ensure that information about my customers is not
3 publicly disclosed, and I have not publicly disclosed that information to others.

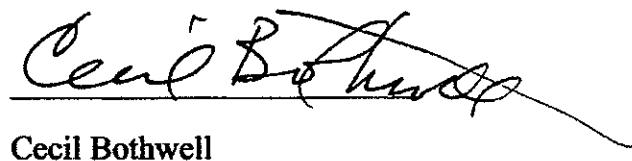
4 12. I reasonably believe that my readers and customers will be chilled from
5 purchasing my books and reading them if Amazon is forced to turn over information revealing
6 who has purchased my books. That chill will, in turn, prevent me from accomplishing my
7 principal goal: having my messages heard by as many people as possible.

8 13. I would like to and intend to continue purchasing expressive and private items
9 through Amazon in the future. I would also like to and intend to continue selling my books
10 through Amazon. That may change, however, at least for certain items, if Amazon is forced to
11 turn over my records and the records of my customers and readers. At a minimum, my behavior
12 will be changed as each time I purchase certain items, and each time I make my books available
13 for sale through Amazon, I will seriously have to consider whether to purchase those items or to
14 sell those items through Amazon.

15 14. I have purchased and sold expressive and private items from websites other than
16 Amazon in the past, and I would like to and intend to continue doing that in the future. That may
17 also change, however, at least for certain items, if Amazon is forced to turn over my records and
18 the records of my customers and readers. At a minimum, my behavior will be changed as each
19 time I purchase certain items on a website, and each time I make my books available for sale
20 through a website, I will seriously have to consider whether to purchase those items or to sell
21 those items through websites.

22 Pursuant to 28 U.S.C. § 1746, I hereby declare and state under penalty of perjury that the
23 foregoing is true and correct to the best of my knowledge, information, and belief.

24 DATED this 21 day of July 2010

25 
26 Cecil Bothwell

27 CECIL BOTHWELL DECLARATION - 4
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